

1 These Findings of Fact and Conclusions of Law
2 Are Not Appropriate for Publication

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UNITED STATES BANKRUPTCY COURT EASTERN DISTRICT OF CALIFORNIA

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6 UNITED STATES BANKRUPTCY COURT
7 EASTERN DISTRICT OF CALIFORNIA

8 In re Case No. 05-10001-A-7
9 DDJ, INC., DC No. JF-5

10 Debtor.

11 In re Case No. 05-10002-A-7 ✓
12 DDJ, LLC, DC No. JF-5

13 Debtor.

14 FINDINGS OF FACT AND CONCLUSIONS OF LAW
15 REGARDING THE OBJECTION BY JOE FLORES TO THE CLAIM OF
16 ROBERT ROSE

17 On January 19, 2005, Robert G. Rose ("Rose") filed a proof
18 of claim in Case No. 05-10001-A-7, the chapter 7 case of DDJ,
19 Inc. (the "Inc. Case"). On January 14, 2005, Rose had filed a
20 proof of claim in Case No. 05-10002-A-7, the chapter 7 case of
21 DDJ, LLC (the "LLC Case"). Each claim was filed before the
22 claims bar date. Rose's proof of claim in the Inc. Case claimed
23 \$6,965 for accounting, tax and related services. That claim is
24 supported by a two page statement of charges. Rose's claim in
25 the LLC Case is for \$3,105 and is supported by a two page
26 statement of charges.

1 In May 2006, Joe Flores, a creditor in both the Inc. Case
2 and the LLC Case, filed objections to the Rose proofs of claim.
3 Rose filed a declaration in support of his claim and in
4 opposition to the objection in the LLC Case. He filed a second
5 declaration in the LLC Case that contains additional itemization
6 about his services in the Inc. Case and probably should have been
7 filed in that case.

8 These objections to claim were both overruled without
9 prejudice because of procedural deficiencies. Thereafter, Flores
10 filed new objections to Rose's proofs of claim in each case, and
11 hearings were held on the objections in each case on August 30,
12 2006. Rose filed no declaration or opposition to these second
13 objections. Following a hearing, the court took both objections
14 under submission. This memorandum¹ contains findings of fact and
15 conclusions of law required by Federal Rule of Bankruptcy
16 Procedure 7052 and Federal Rule of Civil Procedure 52. This is a
17 core proceeding as defined in 28 U.S.C. §157(b) (2) (B).

18 Bankruptcy Code § 502(b) provides that if an objection to
19 claim is made, the court after notice and hearing "shall
20 determine the amount of the claim" as of the date of the filing
21 of the petition. A properly filed proof of claim constitutes
22 prima facie evidence of the amount and validity of the claim. An
23 objection to a claim must establish sufficient credible facts to
24 rebut the proof of claim. The ultimate burden of proof is upon
25 the claimant. In re Lundell, 223 F.3d 1035 (9th Cir. 2000). If

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1 the objecting party overcomes the *prima facie* effect of the proof
2 of claim, the claimant must prove the validity of the claim by a
3 preponderance of the evidence. In re Harrison, 987 F.2d 677
4 (10th Cir. 1993).

5 The objections to Rose's claims are almost identical. The
6 thrust of the objections is that there is no evidence of the
7 specific work that Rose performed for DDJ, Inc. or DDJ, LLC.
8 Additionally, Flores asserts that DDJ, Inc. and DDJ, LLC sold
9 their assets and liabilities to another company on July 30, 1999,
10 and that after that time, neither was involved in business
11 transactions that would make accounting or tax work necessary.

12 Flores includes a request for notice in support of his
13 objection in each case that attaches a declaration of Dennis
14 Hagopian filed in the United States District Court for the
15 Eastern District of California in a civil action between Flores
16 and DDJ, Inc. and others and a declaration of Dennis Vartan filed
17 in the same action. If evidence here, those declarations would
18 tend to support Flores' assertion that DDJ, Inc. and DDJ, LLC
19 sold their assets in 1999.

20 However, there are problems. First, in the context of this
21 objection to claim, the declarations of Dennis Vartan and Dennis
22 Hagopian are hearsay. They are out of court statements offered
23 to prove the truth of the matter asserted. Fed. R. Evid. 801.
24 Thus, they are not admissible evidence.

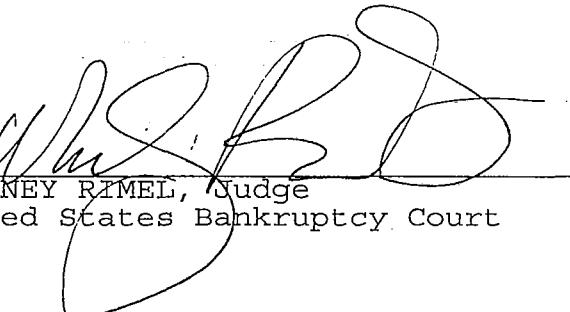
25 Second, even if the declarations were admissible evidence,
26 they do not support Flores' argument. The Hagopian declaration
27 states that after the sale, the surviving entities, DDJ, Inc. and
28 DDJ, LLC, were solvent companies having on hand cash and secured

1 notes for more than \$2 million. The declaration of Mr. Hagopian
2 also states that the business purpose of DDJ, Inc. and DDJ, LLC
3 after the sale was to pursue commercial and residential real
4 estate investments. Additionally, after the sale both entities,
5 according to Hagopian, made distributions to their shareholders
6 and members and filed tax returns. Hagopian states that up until
7 June 2003, the companies had receivables in excess of \$1,900,000
8 and virtually no liabilities.

9 Vartan's declaration is in accord. If anything, these
10 declarations are support for Robert Rose's proof of claim in each
11 case.

12 The proof of claim in each case is *prima facie* evidence of
13 the amount and validity of the claim. The objection fails to
14 overcome that *prima facie* effect, for the reasons set forth
15 herein. Therefore, in each case, the objection is overruled.
16 Separate orders will issue.

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18 DATED: September 7, 2006

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20 
21 WHITNEY RIMEL, Judge
22 United States Bankruptcy Court
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1 PROOF OF SERVICE BY MAIL

2 STATE OF CALIFORNIA)
3 COUNTY OF FRESNO) ss.

4 I am a citizen of the United States and a resident of the
5 county aforesaid; I am over the age of eighteen years and not a
6 party to the within above-entitled action; my business address is
7 2656 U.S. Courthouse, 1130 O Street, Fresno, California, 93721. On
8 September 7, 2006, I served the within document on the interested
9 parties in said action by placing a true copy thereof enclosed in a
10 sealed envelope with postage thereon fully prepaid, in the United
States mail at Fresno, California, addressed as follows:

11 Joe Flores
12 P. O. Box 3086
Visalia, CA 93278

13 Robert Rose, CPA
1100 W. Shaw Ave., Suite 138
Fresno, CA 93711-3708

14 David R. Jenkins, Esq.
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16 Thomas H. Armstrong, Esq.
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18 Jeffrey L. Wall, Esq.
6067 N. Fresno Street, #101
Fresno, California 93710-5264

20 Henry D. Nunez, Esq.
4478 W. Spaatz Avenue
Fresno, CA 93722

21 Office of the United States Trustee
2500 Tulare Street
Suite 1401
Fresno, California 93721

24 I certify (or declare), under penalty of perjury, that the
foregoing is true and correct. Executed on September 7, 2006, at
25 Fresno, California.

26 
27 Kathy Torres, PLS